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10/686,356	10/14/2003	Shaun P. Cooley	20423-08165	6704

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EXAMINER	
KIM, TAE K	

ART UNIT	PAPER NUMBER
2453	

NOTIFICATION DATE	DELIVERY MODE
10/16/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/686,356	COOLEY, SHAUN P.	
	Examiner	Art Unit	
	TAE K. KIM	2453	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 July 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,7-9,11,12 and 14-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,7-9,11,12 and 14-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This is in response to the Applicant's response filed on July 15, 2009. Claim 24 has been amended by the Applicant. Claims 1 – 4, 7 – 9, 11, 12, 14 – 24, where Claims 1, 16, and 18 are in independent form, are presented for examination.

Response to Amendment

The Declaration of Fact filed on July 15, 2009 under 37 CFR 1.131 is sufficient to overcome the Ralston reference.

Response to Arguments

Applicant's arguments filed on July 15, 2009 have been fully considered but they are moot based on the new grounds of rejection as stated below.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1 – 4, 7 – 9, 11, 12, 14, and 15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claimed methods must be tied to another statutory class (such as a particular apparatus) to be a patent eligible method under 35 U.S.C. 101. "The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies Sec. 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. *See Benson*, 409 U.S. at 70, 93 S. Ct. 253. Certain considerations are applicable to analysis under either

branch. First, as illustrated by *Benson*...the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility. *See Benson*, 409 U.S. at 71-72, 93 S. Ct. 253. Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. *See Flook*, 437 U.S. at 590, 98 S. Ct. 2552." *In re Bilski*, 545 F.3d 943, at 961-62.

2. Claim 22 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. To overcome this type of 101 rejection, the claims need to be amended to include only the physical computer media (e.g. computer readable *storage* medium) and to be unassociated with any transmission media or other intangible or non-functional media.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 – 3, 7 – 9, 11, 12, and 14 – 23 are rejected under 35 U.S.C. 103(a) as being anticipated by U.S. Patent 6,842,773, invented by Geoffrey D. Ralston et al. (hereinafter "Ralston"), in view of U.S. Patent 5,751,847, invented by Robert Wuyts (hereinafter "Wuyts")

3. Regarding Claims 1, 16, and 18, Ralston discloses a method for countering spam that disguises characters within an electronic message [Fig. 7A; Col. 12, Line 63 - Col. 13, Line 15], said method comprising the steps of:

locating portions of the electronic message where the difference between foreground color and background color is negligible [Fig. 7A; Col. 12, Line 63 - Col. 13, Line 15; system retrieves email message and removes headers or hidden information in the body of the message, such as white text on a white background or other HTML information]; comprising:

determining whether at least one of the foreground color and the background color is a gray-scale color [[Fig. 7A; Col. 12, Line 63 - Col. 13, Line 15; system retrieves email message and removes headers or hidden information in the body of the message, such as white text on a white background or other HTML information]; and

responsive to at least one of the foreground color and the background color being a gray-scale color, deeming the difference between the colors to be negligible [[Fig. 7A; Col. 12, Line 63 - Col. 13, Line 15; system retrieves email message and removes headers or hidden information in the body of the message, such as white text on a white background or other HTML information];

deleting from the electronic message foreground characters from said portions, to form a redacted electronic message [[Fig. 7A; Col. 12, Line 63 - Col. 13, Line 15; system retrieves email message and removes headers or hidden information in the body of the message, such as white text on a white background or other HTML information]; and

forwarding the redacted electronic message to a spam filter [[Fig. 7A; Col. 12, Line 63 - Col. 13, Line 15; the visible text body is loaded into a word array to determine if the message is unsolicited (spam)].

Ralston, however, does not specifically disclose that the deeming the difference between the colors to be negligible is based on a comparison of saturation and brightness values of the colors regardless of hue values of the colors.

Wuyts discloses an image processing method for determining the color or color code based on the brightness, saturation, and hue levels [Fig. 5; Abstract]. Wuyts further discloses that the brightness value of the examined color is first determined, then the saturation value of the examined color to determine if the color is colorless [Fig. 5]. If the color is determined to be colorless, only the brightness level of the color is evaluated until a specific gray-scale is determined for the examined color; the hue value is not determined for gray-scale colors [Fig. 5]. Therefore, if either the foreground or background color is a gray-scale color, the Wuyts method would only have determined the brightness and saturation values for that particular foreground and/or background image and a comparison hue values will not be irrelevant.

It would have been obvious to one skilled in the art at the time of the invention to incorporate the teachings of Wuyts to Ralston by incorporating the method of determining the brightness and saturation values of the evaluated message before the hue values within the converting component to eliminate words that were determined to be essentially invisible in the message. The Wuyts color determination method is

implemented in software form and can readily be coded into the converting component of Ralston.

The motivation to do so is to simplify the comparing between the foreground and background color of the message by eliminating the hue value determination when either the foreground or background color is a gray-scale color. Doing so will simplify the comparing process under certain situations to two values instead of three values, which reduces the load on the processor handling this comparison process.

4. Regarding Claims 2 and 23, Ralston, in view of Wuyts, discloses all the limitations of Claim 1 above. Ralston further discloses of setting a negligibility threshold such that when the difference between foreground color and background color is negligible for a certain portion of the electronic message [Fig. 7A; Col. 12, Line 63 - Col. 13, Line 15; system retrieves email message and removes headers or hidden information in the body of the message, such as white text on a white background or other HTML information], said portion is invisible or nearly invisible to a typical human viewer of the electronic message [[Fig. 7A; Col. 12, Line 63 - Col. 13, Line 15; hidden information is anything that is not visible to the user when reading the message].

5. Regarding Claims 3, 9, and 17, Ralston, in view of Wuyts, discloses all the limitations of Claims 1 and 16 above. Wuyts further discloses that, responsive to neither the foreground color nor the background color being a gray-scale color, the color determination step includes determining the hue, saturation, and brightness [Fig. 5].

6. Regarding Claims 7 and 8, Ralston, in view of Wuyts, discloses all the limitations of Claim 1 above. Neither Ralston nor Wuyts specifically disclose of determining

whether or not the differences in brightness, saturation, or hue between the foreground and background are negligible based on certain percentages.

Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action, i.e. *"the negligibility of an electronic message can be determined if there are small percentage differences in the brightness, saturation, and hue of the foreground to the background,"* are now established as admitted prior art of record for the course of the prosecution. See In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Furthermore, the percentage differences in saturation, brightness, and hue to determine whether or not the text is negligible can vary depending on the designer's preferences. To determine if the difference between the foreground and background color is negligible when: a) the difference in saturation between foreground and background is less than 5% and the difference in brightness between foreground and background is less than 4%, or b) the difference in saturation between foreground and background is less than 3% and the difference in brightness between foreground and background is less than 2%, would have been a designer's choice in implementing the system taught by Ralston, in view of Wuyts.

7. Regarding Claim 11, Ralston, in view of Wuyts, discloses all the limitations of Claim 9 above. Neither Ralston nor Wuyts specifically disclose of determining whether

or not the differences in brightness, saturation, or hue between the foreground and background are negligible based on certain degrees and percentages.

Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action, i.e. *"the negligibility of an electronic message can be determined if there are small percentage differences in the brightness, saturation, and hue of the foreground to the background,"* are now established as admitted prior art of record for the course of the prosecution. See In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Furthermore, the percentage or degrees of differences in saturation, brightness, and hue to determine whether or not the text is negligible can vary depending on the designer's preferences. To determine if the difference between the foreground and background color is negligible when the difference in hue between foreground and background is less than 4 degrees and the combined difference in saturation and brightness values of the foreground and background is less than 12%, would have been a designer's choice in implementing the system taught by Ralston, in view of Wuyts.

8. Regarding Claims 12, 15, and 20, Ralston discloses all the limitations of Claims 1 and 18 above. Ralston further discloses that the electronic message consists of e-mail [Fig. 7A; Col. 12, Line 63 - Col. 13, Line 15; system retrieves email message], and the locating step comprises using a HTML parser [Fig. 7A; Col. 12, Line 63 - Col. 13, Line

15; hidden information can be white text on a white background or other HTML information].

9. Regarding Claim 19, Ralston, in view of Wuyts, discloses all the limitations of Claim 18 above. Ralston further discloses that the locating step comprises using a color comparison module [Fig. 7A; Col. 12, Line 63 - Col. 13, Line 15; hidden information can be white text on a white background].

10. Regarding Claim 14, Ralston, in view of Wuyts, discloses all the limitations of Claim 1 above. Ralston further discloses that the spam filter is responsive to characters within the electronic message [Fig. 6B and 6D; spam filter screens the message for key words to determine if the message is unsolicited].

11. Regarding Claims 21 and 22, Ralston, in view of Wuyts, discloses all the limitations of Claims 1 and 16 above. Wuyts further discloses that the saturation value is compared to a reference value to determine if that particular color is one of gray-scale color [Fig. 5]. Since the designer of the comparison module in Ralston will determine the reference value, it would have been the designer's choice to select the reference value to be so that the saturation value of the examined color is be zero to be determined to be one of gray-scale color.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ralston, in view of Wuyts, ,in further view of U.S. Appl. 2002/0113801, filed by Maire Reavy et al. (hereinafter "Reavy").

12. Regarding Claim 4, Ralston, in view of Wuyts, discloses all the limitations of Claim 3 above. Neither Ralston nor Wuyts, however, specifically discloses that the red,

green, and blue components of the foreground and background colors in the electronic message are converted into hue, saturation, and brightness values.

Reavy discloses that the hue of the foreground and background must be evaluated, including the red, green and blue components of the background and foreground, to determine the legibility of the text to a user on a display [Fig. 1, items 104 and 106; Para. 0010, 0036, 0037]. It would have been obvious to one skilled in the art at the time of the invention to evaluate the red, green and blue components of the background and foreground to determine the visibility of text within an electronic message. The electronic message would be viewed by a user on a display terminal and the legibility would be determined by the red, green and blue components to determine the hue of the background and foreground comparisons between the foreground and background. This would allow the determination of whether or not the text within the electronic message is visible to the user.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ralston, in view of Wuyts, ,in further view of U.S. Appl. 2002/0163527, filed by Dong S. Park (hereinafter "Park").

13. Regarding Claim 24, Ralston, in view of Wuyts, discloses all the limitations of Claim 1 above. Ralston further discloses of setting a negligibility threshold such that when the difference between foreground color and background color is negligible for a certain portion of the electronic message [Para. 0032; if a word or character is rendered as white or very light grey text on a white background, the word or character is essentially invisible], said portion is invisible or nearly invisible to a typical human viewer

of the electronic message [Para. 0033; if these words are included white-on-white color, the words may make the message less spam-like according to filters and users would not see them at all].

Wuyts further discloses that the saturation value is compared to a reference value to determine if that particular color is one of gray-scale color [Fig. 5]. Since the designer of the comparison module in Ralston will determine the reference value, it would have been the designer's choice to select the reference value to be so that the saturation value of the examined color is be zero to be determined to be one of gray-scale color.

Neither Ralston nor Wuyts, however, specifically disclose that deeming the difference between the colors to be negligible is based at least in part on whether a monitor associated with a recipient of the electronic message is a liquid crystal display (LCD) monitor.

Park discloses of a system and method for a user to adjust the display characteristics of a particular monitor based on the type of monitor [Abstract, Figs. 1 and 2]. Park further discloses that the system first determines whether if the monitor is a LCD monitor before changing the visual range of the monitor [Fig. 2] and that the images viewed by a user of a LCD monitor are different from other monitors [Para. 0062]. It would have been obvious to one skilled in the art at the time of the invention to incorporate the teachings of Park with Ralston and Wuyts to adjust the filtering system to the gray-scale colors of the LCD monitor. The motivation to do so is to adjust the filtering system accordingly to catch "invisible" text since the images viewed by a user of

a LCD monitor are different from other monitors will be different for LCD monitors versus another type of monitor, such as a CRT.

Conclusion

Examiner's Note: Examiner has cited particular figures, columns, line numbers, and/or paragraphs in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae K. Kim, whose telephone number is (571) 270-1979. The examiner can normally be reached on Monday - Friday (8:00 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (571) 272-6776. The fax phone number for submitting all Official communications is (703) 872-9306. The fax phone

number for submitting informal communications such as drafts, proposed amendments, etc., may be faxed directly to the examiner at (571) 270-2979.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/Tae K. Kim/

Tae K. Kim
Examiner, Art Unit 2453

October 1, 2009

/Joseph Thomas/
Supervisory Patent Examiner, Art Unit 2453